



February 10, 2011

Senate Agriculture Committee
Lansing, Michigan

Re: SB 122-123 – MAEAP

Dear Senators,

The Michigan Environmental Council supports the concept of encouraging farms in Michigan to become enrolled in the Michigan Agricultural Environmental Assurance Program (MAEAP). The reduction of fertilizer and pesticides inputs by participating farm can assist Michigan in keeping waterways cleaner. We are concerned about the significant financial barrier to participation that small farming operations will have. Therefore, we believe that the commitment of resources need to be balanced between getting more farms in the program and providing assistance to those farms that may not be able to become fully MAEAP verified, but are interested in improving environmental practices.

We also think it is important to realize that program participation does not guarantee compliance with environmental laws. A number of the MAEAP verified farms have been found in violation of environmental laws and have paid civil fines to the state. With that in mind, we make the following suggestions for improving the legislation that has been proposed:

SB 122

Protection from civil fines (pg. 2) – Due to the significant protection afforded by this section, subsection (1)(B)(ii) needs to be clearer regarding who is eligible to use this section. It is unclear on who has to make a determination that violations have occurred and what constitutes a pattern of violations. One potential manner to reduce potential abuse of the section would be to limit the number of times a farm could invoke the use of this section. We would suggest that it be limited to one instance every three years.

Act-of-God weather event (pgs 2-3) – This section appears to give some special treatment to discharges that occurred under certain conditions. We have two questions regarding this section.

- Application – Does this section impact practices other than the land application of manure? Have application of fertilizers or pesticides ever been found to be a “discharge under part 31?”
- Standard applied - The standard used is based on the National Weather Service predicted less than 70% chance of rain exceeding ½ of inch. Have studies been conducted that measure the rate of discharge during different rain events? This standard would appear to include some days (those between 50-70% chance) that reflect a fairly high chance of significant rain. We would be interested in the potential impacts of using a lower number (the total number of days and area that would be potentially restricted).

Obligation to obtain a permit (pg. 3)

Section (2) makes it clear that this section does not modify or limit any obligation to obtain a permit under this part. If a facility currently experiences a discharge that exceeds water quality standards, are they currently required to get a permit?

Water quality monitoring (pg. 7)

The bill directs money in the clean water fund to the promotion of MAEAP and to encourage more farms to be verified. It also takes out the current priority for monitoring water. We share the desire of others to get more farms to be verified. However, the purpose of getting farms enrolled is to improve water quality. We are worried that the measured metric becomes the number of farms enrolled in MAEAP – and we end up with insufficient funding to determine whether it has any impact on water quality. We think that for purposes of measuring success with a number of programs, measuring water quality and improving it needs to be the focus of the “Quality of Life” cluster of departments.

SB 123

MAEAP standards (pg 4) – All the proposed benefits of the bill flow from the designation of a farm as MAEAP verified, which is obtained by meeting MAEAP standards. However, the actual standards are not included in the bill and provide the Agriculture Commission wide latitude to define those standards. Those currently required today should be included in the list, and the commission given the limited authority to revise those standards or add others they identify as necessary.

Verification revocation (pg. 14) – Language similar to that used in SB 122 regarding a “pattern of continuous repeated violations” appears under the section allow revocation of verification. Due to the significant protection afforded by this part and others, subsection (7)(D) needs to be clearer regarding who is eligible to use this section. It is unclear on who has to make a determination that violations have occurred and what constitutes a pattern of violations.

Liability Protection (pg. 14) – This section appears to give MAEAP verified farms broad liability protection for any contamination caused by activities on the farm. This provision undermines personal responsibility to conduct business in manner that protects public health and the property rights of neighbors.

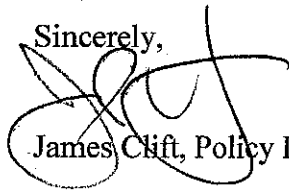
Water quality monitoring (pgs. 16, 18)

We are interested in the plans of the department to continue groundwater and surface water monitoring.

We do not support the removal the authority to do site-specific “envelope” monitoring at sites where known contamination exists (pg 16, line 20). In addition, if public funds are used to perform other water quality monitoring results of those tests should also be public. We agree with provision that allow voluntary tests performed by farmers, utilizing their own funds, to be shared with the department and provided FOIA protection (unless otherwise required by permit).

We are interested in working with interested parties to address these questions and concern and craft legislation to provide targeted incentives to encourage participation in the program.

Sincerely,

A handwritten signature in black ink, appearing to read "James Clift", written over a circular stamp or seal.

James Clift, Policy Director